IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 880

JAMES F. McMANUS,

Petitioner,

—v.—

CIVIL AERONAUTICS BOARD,

Respondent,

UNITED AIR LINES, INC.,

Intervenor-Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, James F. McManus, respectfully petitions for a rehearing of the order made and entered herein denying my petition for a writ to the United States Court of Appeals for the Second Circuit and submits:

That for other substantial grounds available although not previously presented, petitioner submits that he is amazed that the Solicitor General would now oppose his petition especially in view of the below quoted letter dated August 26, 1954 which had been written to your petitioner over the signature of Hon. Stanley N. Barnes, Assistant Attorney General:

"James F. McManus, Esq.
Professional Building
64 Division Avenue
Levittown, New York

Re: Air Traffic Conference Resolutions:
Ticket Agents

Dear Mr. McManus:

This is in response to your letters of June 28, 1954 and July 13, 1954 concerning certain Air Traffic Conference Resolutions which do not permit airlines individually to enter into ticket agency or ticket broker agreements.

Under the Civil Aeronautics Act of 1938, agreements among airlines, when approved by the Civil Aeronautics Board, are immunized from antitrust prosecution (49 U. S. C. 492 and 494). The basic agreement of the Air Traffic Conference of America regarding ticket agents was approved by the Civil Aeronautics Board by Order Serial No. E-5685, dated September 7, 1951. The Department of Justice, through this Division, has vigorously protested to the Board approval of this type of agreement, particularly in Docket No. 3350. The Board, while taking note of the Department's objections, has previously felt that in the interest of economy of airline operation, the agreements should be approved. There has been some indication that the Board, as now constituted, does not support entirely these past approvals. By Order No. E-8543, dated August 3, 1954, the Board rejected almost entirely present airline tariff limitations on liability.

In view of the above circumstances, it is suggested that you present your complaint to the Civil Aeronautics Board for its consideration.

Sincerely yours,

/s/ STANLEY N. BARNES
Assistant Attorney General"

A copy of said letter was before the Court of Appeals in the ATC matter at page 4519 of the certified transcript thereof.

It is noted the Court of Appeals also had before it as part of the certified transcript in the IATA matter at pages 810 and 828 thereof two "vigorous" briefs submitted by the Department of Justice in CAB Docket 3350 which cited and relied upon numerous Supreme Court decisions.

There surely is now no good basis for the Solicitor General to oppose the granting of the sought writ. It appears from the aforesaid quoted letter that the Department of Justice had felt:

"The Board, while taking note of the Department's objections, has previously felt that in the interest of economy of airline operation, the agreements should be approved"

whereas the Board in its order No. E-14012 has now said beginning at page 8 thereof:

"Our approval of a conference system has not been based upon the economies resulting from the use of the least number of agents . . ."

And further:

> "• • • Indeed, whatever increase in costs results from the elimination of the need and sponsorship provision is but a small price for the carriers to pay for the benefits accruing from retention of a modified conference system."

Furthermore it appears that the Board's Examiner, the Board itself and the Court of Appeals in the ATC matter have erroneously compared the Air Traffic conference system control of ticket or travel agents with that relating to the sale of tickets for steamship transportation.

It is submitted that the President and Senators were gravely concerned upon learning that proposed legislation with respect to aviation had been drafted in hotel rooms; that a close comparison between Section 15 of the Shipping Act (46 U. S. C. 814) with Section 412 of CAB's governing statutes indicates that Section 412 as finally enacted differs substantially from Section 15 of the Shipping Act. It is submitted that Examiner Keith at page 75 of his Initial Decision in the ATC matter could only refer to testimony of one Colonel Gorrell on legislation that was not enacted:

> "• • • The only reasonable alternative seems to be that which this committee has already approved in the case of one industry which is most similar to air carriers. This is the shipping industry • • •"

as legislative history for a comprehensive scheme of agency selection and retention, yet the Court of Appeals had before it the Recommended Decision of Examiner Pfieffer in the IATA matter where he had observed at page 23 thereof:

"Colonel Gorrell's reference to 'eliminating' favors to hotel operators and to others who may sell tickets; consolidating ticket agencies regulating commissions to outside traffic agencies is scant legislative history for such a comprehensive scheme of agency selection and retention."

Indeed petitioner submits that the Court of Appeals erred when it would make any comparison of Section 412 of the Federal Aviation Act with Section 15 of the Shipping Act with respect to concerted control of ticket agents. Your petitioner respectfully submits that he can find nothing in the legislative history of the Shipping Act of 1916 whereby steamship carriers could properly claim any right to maintain any comprehensive scheme or concerted control over the selection and retention of members of the public who would wish to sell tickets for steamship transportation.

It is respectfully submitted that *Joseph Singer* v. *Transatlantic Passenger Conf., et al.,* 1 U. S. S. B. B. 520 (1936) cited by Examiner Keith at page 76 of his Initial Decision as adopted by the Board in the ATC matter ignored a brief submitted therein by officials of the State of New York quoting at length from *A. L. A. Schecter Poultry Corp.* v. *United States,* 295 U. S. 495; was never judicially reviewed; is not a binding authority on any Board or Court and indeed the Federal Maritime Board itself in its Docket 873 is only now making the first comprehensive investigation of agreements filed under Section 15 of the Shipping Act with respect to the Transatlantic Passenger Conference's agreements governing travel agents.

It is respectfully submitted that while the Solicitor General would point out on brief that Section 411 of the Respondent's governing statute (Pet. 3) was amended in 1952 to give CAB certain limited authority over ticket

agents after notice and hearing, Section 412 (Pet. 4) never included nor was amended to include the terms "or the sale thereof" as was Section 411 amended in 1952 to include the terms "ticket agent" and "or the sale thereof" at the request of the Civil Aeronautics Board.

It is further respectfully submitted that the term "other person" in Sections 1 and 15 of the Shipping Act was never meant to include by definition or otherwise "ticket agent" or "travel agent."

It is respectfully submitted that the questions presented by your petitioner should now be settled by this Court. The original petition herein has already shown how the Civil Aeronautics Board has used the Court of Appeals decision in the ATC matter as authority for its further order in the IATA matter. The Federal Maritime Board will no doubt consider the Court of Appeals decision in the ATC matter with respect to its determination of its proceedings in its Docket FMB #873; yet your petitioner submits that the Circuit Court's decision in the ATC matter is in error as aforesaid; it would affirm CAB's orders in the ATC matter which would mistakenly rely on a comparison of a conference system concerted control of agents or brokers in the sale of tickets for steamship transportation which your petitioner respectfully submits was never contemplated by the Shipping Act of 1916.

Wherefore it is respectfully submitted that the order denying certiorari herein be vacated and that your petitioner's petition for a writ of certiorari be granted at least with respect to the Circuit Court of Appeals affirmation of Respondent's orders in the ATC matter.

Respectfully submitted,

JAMES F. MCMANUS
Attorney for Petitioner Pro Se

Certificate

I do hereby certify that this Petition for a Rehearing is presented in good faith and not for delay and is restricted to the grounds above specified.

JAMES F. MCMANUS
Attorney for Petitioner Pro Se